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OFFICE OF THE GENERAL COUNSEL

M E M O R A N D U M

TO: Chief, Dockets Branch

FROM: Associate General Counsel, Litigation Division

SUBJECT: Listeners' Guild, Inc. v. FCC, No. 93-1618. Filing of a new Notice of Appeal in the United States Court of Appeals for the District of Columbia Circuit.

DATE: September 22, 1993

Docket No(s). MM 93-54

File No(s). BRH-910201WL, BPH-910430ME and BPH-910502MQ

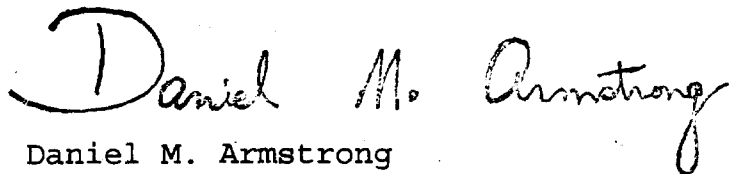
This is to advise you that on September 14, 1993, Listeners' Guild, Inc. filed with the United States Court of Appeals for the District of Columbia Circuit a:

☐ Section 402(a) Petition for Review  
☒ Section 402(b) Notice of Appeal

of the following FCC decision: GAF Broadcasting Company, Inc., FCC 93-385, released August 16, 1993. Appellant is challenging the Commission's denial of its petition for reconsideration of an earlier order which denied its petition to deny the application of GAF Broadcasting Company, Inc. for renewal of the license of radio station WNCN(FM), New York, New York.

Due to a change in the Communications Act, it will not be necessary to notify the parties of this filing.

The Court has docketed this case as No. 93-1618, and the attorney assigned to handle the litigation of this case is C. Grey Pash, Jr..

  
Daniel M. Armstrong

cc: General Counsel  
Office of Public Affairs  
Shepard's Citations

RECEIVED

IN THE UNITED STATES COURT OF APPEALS  
FOR THE DISTRICT OF COLUMBIA CIRCUIT

SEP 21 1993

LISTENERS' GUILD, INC.

Appellant,

v.

FEDERAL COMMUNICATIONS  
COMMISSION,

Appellee.

OFFICE OF GENERAL COUNSEL

No. 93-1618

Filed: 9/24/93

NOTICE OF APPEAL

Notice is hereby given that LISTENERS' GUILD, INC. ("Guild"), by its attorney, David M. Rice, pursuant to Section 402(b)(6) of the Communications Act of 1934, as amended, 47 U.S.C. § 402(b)(6), and pursuant to Rule 15 of the Federal Rules of Appellate Procedure, hereby appeals\* from the *Hearing Designation Order* issued by the Chief, Audio Services Division, Mass Media Bureau, of the Federal Communications Commission ("Commission" or "FCC"), released March 15, 1993 (No. DA 93-226) (the "HDO"), which, *inter alia*, denied the Guild's *Petition to Deny* the application of GAF Broadcasting Company, Inc. ("GAF") for renewal of the license of radio station WNCN (FM), New York, New York, and from the *Memorandum Opinion and Order* of the FCC, released August 16, 1993 (FCC 93-385) (the "Reconsideration Order"), which, *inter alia*, denied the Guild's *Petition for Reconsideration* of the HDO. Copies of the HDO and the *Reconsideration Order* are attached hereto. The HDO

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\* This Notice of Appeal is being filed by Appellant as a protective measure to ensure the availability of review in this Court and to avoid potential future disputes, in light of uncertainty both as to the finality of the underlying actions of the FCC and as to whether review thereof is properly commenced by a Notice of Appeal or by a Petition for Review (which the Appellant also intends to file in timely fashion).

and the *Reconsideration Order* are appealed from insofar as they denied the Guild's *Petition to Deny* said application.

#### STATEMENT OF THE NATURE OF THE PROCEEDINGS

The HDO appealed from denied the Guild's *Petition to Deny* the application of GAF for renewal of the license of radio station WNCN (FM), New York, New York. The *Reconsideration Order* denied the *Petition for Reconsideration* of the HDO filed by the Guild.

#### REASONS ON WHICH APPELLANT INTENDS TO RELY

1. The actions of the FCC denying the Guild's *Petition to Deny* the renewal of the license of radio station WNCN (FM), New York, New York, were arbitrary and capricious, were contrary to Commission precedent and applicable law, were not supported by substantial record evidence, and were an abuse of the Commission's discretion.

Respectfully submitted,

LISTENERS' GUILD, INC.

By:



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David M. Rice  
Its Attorney

One Old Country Road  
Carle Place, New York 11514  
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September 14, 1993